

Sixth Appellate District

San Jose, California

MONDAY, DECEMBER 4, 2006

H028561 LUCAS v. THE MITCHELL GROUP, INC., et al.

The request for publication of the opinion filed in the above entitled action by Law Division of NRT on November 28, 2006, is denied. The opinion does not establish a new rule of law, nor does it meet any of the other criteria set forth in California Rules of Court, rule 976(c).

In compliance with California Rules of Court, rule 978, the Clerk shall transmit the request for publication and a copy of this order to the Supreme Court.

(Rushing, P.J.; Premo, J., Elia, J. participated in this decision.)

Filed December 4, 2006

TUESDAY, DECEMBER 5, 2006

H030203 IN RE BERNARD JOHN WEIDER ON HABEAS CORPUS

The second to last paragraph on page 6 of the trial court's order of May 19, 2006, commencing with "Turning now to the remedy..." is stricken in its entirety. As modified, the order granting Weider's petition for writ of habeas corpus and directing the Board of Parole Hearings to "conduct a new hearing 30 days after receipt of this order by the Attorney General," is affirmed.

The writ of supersedeas staying the order of the trial court shall dissolve upon issuance of the remittitur. The time within which the Board of Parole Hearings must hold a new hearing shall commence upon dissolution of the stay. (published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 5, 2006

H030128 PEOPLE v. VEST

The judgment is affirmed. (not published)

(McAdams, J.; I concur: Bamattre-Manoukian, Acting P.J.;

Dissenting opinion by Mihara, J.)

Filed December 5, 2006

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Elia, J.; Rushing, P.J.; Premo, J.; and LaNae Brooks, Deputy Clerk.

H029727 PEOPLE v. AYALA

Cause called and argued by William Robinson appearing for Appellant and by Christopher W. Grove, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Tuesday, December 5, 2006 (continued)

H029024 PEOPLE v. WALLACE

Cause called and argued by Jean F. Matulis appearing for Appellant and by Linda M. Murphy, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029150 PEOPLE v. FLORES

Cause called and argued by Ruth McVeigh appearing for Appellant and by David M. Baskind, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029210 ISRAELSSON v. HICKS

H029998 ISRAELSSON v. HICKS

Cause called and argued by Leslie Ellen Shear appearing for Appellant and by David Ross appearing for Respondent. Cause ordered submitted.

H029211 TORRES v. CITY OF SAN JOSE, et al.

Cause called and argued by Van M. Smith appearing for Appellant and by Michael J. Dodson, Sr. appearing for Respondents. Cause ordered submitted.

Court is in recess until the 1:30 p.m. calendar

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Premo, Acting P.J.; Bamattre-Manoukian, J.; Duffy, J.; and W. Magsaysay, Deputy Clerk.

H028779 PEOPLE v. GALLEGOS

Cause called and argued by Lyn A. Woodward appearing for Appellant and by Eric D. Share, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Premo, Acting P.J. and Duffy, J. then leave the bench. Mihara, J. and McAdams, J., now join Bamattre-Manoukian, Acting P.J. on the bench.

H029996 PEOPLE v. GAXIOLA

Cause called and argued by Seth Flagsberg appearing for Appellant and by Martin S. Kaye, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029524 PEOPLE v. VIBANCO

Cause called and argued by Laurence Sullivan, Deputy Attorney General, appearing for Appellant and by Stephen B. Elrick appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Tuesday, December 5, 2006 (continued)

H029365 HALPIN v. CITY OF SAN JOSE, et al.

Cause called and argued by James McManis appearing for Appellant and by Clifford S. Greenberg appearing for Respondents. Cause ordered submitted.

H029877 KASIRAMAN, et al. v. ASSURANCE COMPANY OF AMERICA

Cause called and argued by Alexander Stuart appearing for Appellants and by Michael K. Johnson appearing for Respondent. Cause ordered submitted.

Mihara, J. leaves the bench and Duffy, J. takes the bench.

H028813 McALLISTER v. COUNTY OF MONTEREY, et al.

Cause called and argued by David C. Sweigert appearing for Appellant, by Frank G. Tiesen appearing for Respondents County of Monterey, et al., and by Sheri Lynn Damon, appearing for respondents Sheldon Laube, et al. Cause ordered submitted.

Court adjourns.

H028901 PEOPLE v. HAMMOND

The judgment is reversed. (not published)
(McAdams, J.; I concur: Rushing, P.J.; Dissenting opinion by Mihara, J.)
Filed December 5, 2006

H028703 PEOPLE v. VILLALOBOS, et al.

The judgment is reversed. (not published)
(Elia, J.; We concur: Rushing, P.J., Premo, J.)
Filed December 5, 2006

WEDNESDAY, DECEMBER 6, 2006

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Mihara, J.; McAdams, J.; and Jane Valdez Flor, Deputy Clerk.

H027950 PEOPLE v. LEWIS

Cause called and argued by David M. Morse appearing for Appellant and by Dorain Jung, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Mihara, J. and McAdams, J. leave the bench and Premo, J. and Duffy, J. take the bench.

Sixth Appellate District

San Jose, California

Wednesday, December 6, 2006 (continued)

H028358 PEOPLE v. GARCIA

Cause called and argued by J. Frank McCabe appearing for Appellant and by Dorian Jung, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Duffy, J. leaves the bench and Elia, J. takes the bench.

H029814 PEOPLE v. ERNESTO H.

Cause called and argued by Michael Kresser appearing for Appellant and by Christopher Grove, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H030047 KELLY v. RMI INSURANCE SERVICES

Cause called and argued by Gregory A. Wedner appearing for Appellant RMI Insurance and by Austin B. Comstock appearing for appellant Kelly. Cause ordered submitted.

H029004 MULLER, as Trustee v. KEITH

Cause called and argued by Laura Barchick appearing for Appellant and by John H. McSpadden appearing for Appellant. Cause ordered submitted.

Court recesses until the 1:30 p.m. calendar.

H029734 In re MICHAEL O., et al.; DFCS v. NICANDRO O., et al.

The order terminating Jennifer's and Nicandro's parental rights is conditionally reversed, and the matter is remanded to the juvenile court with directions that the Department conduct further investigation and provide all known ancestral information to the identified tribes. The Department is directed to file proof of receipt of such notice by the tribes, along with a copy of the notice and any responses. If, after receiving notice as required by the ICWA, no tribe responds indicating that Michael and Noah are Indian children, or the responses received indicate they are not Indian children within the meaning of the ICWA, the order terminating parental rights shall be immediately reinstated. If any tribe determines that Michael and Noah are Indian children within the meaning of the ICWA, the juvenile court shall conduct further proceedings applying the provisions of the ICWA, Welfare and Institutions Code section 360.6, and rule 1439 of the California Rules of Court. (not published) (Duffy, J.; We concur: Mihara, Acting P.J., McAdams, J.)
Filed December 6, 2006

Sixth Appellate District

San Jose, California

Wednesday, December 6, 2006 (continued)

H030077 PEOPLE v. SKOVERSKI

By the Court:

On the court's own motion, the submission order in the above-entitled matter dated November 7, 2006, is hereby vacated. The record on appeal is deemed augmented with a copy of the Order re Restitution filed on May 2, 2006 in Santa Clara County Superior Court case no. CC507816. The matter is hereby resubmitted.

Dated: December 6, 2006 Rushing, P.J.

H029307 KATZ v. MOUNTAIN VIEW-WHISMAN SCHOOL DISTRICT

By the Court*:

Appellant's petition for rehearing is denied.

Filed: December 6, 2006

*Before Rushing, P.J., Premo, J. and Elia, J.

H028565 PEOPLE v. HARVEY et al.

(Filed order modifying opinion.) The petitions for rehearing are denied. There is no change in judgment. (not published)

(Premo, J., Rushing, P.J., Elia, J.)

Filed December 6, 2006

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Elia, J.; Duffy, J.; and LaNae Brooks, Deputy Clerk.

H028863 WALLS v. PEASLEY

Cause called and argued by Ted Baum appearing for Appellant and by Richard Hilovsky appearing for Respondent. Cause ordered submitted.

H029952 NGHIEM v. FUJITSU MICROELECTRONICS, et al

Cause called and argued by Peter Nghiem appearing in propria persona and by Robert Wilger appearing for Respondents. Cause ordered submitted.

H029791 SHISLER, et al. v. SANFER SPORTS CARS

Cause argued and argued by Scott Kaufman appearing for Appellants and by Henry Writa appearing for Respondent. Respondent allowed ten days to file an opposition to appellant's written motion at which time the cause is ordered submitted.

H026664 BARNES v. BARNES

No appearance made by counsel. Counsel having previously waived oral argument, the cause is ordered submitted.

Sixth Appellate District

San Jose, California

Wednesday, December 6, 2006 (continued)

H030560 BRITTS, et al. v. SUPERIOR COURT OF SANTA CLARA
Cause called and argued by Lori Romley appearing for
Petitioners and by Robert Moore appearing for Respondent. Cause
ordered submitted. Court adjourns.

THURSDAY, DECEMBER 7, 2006

(no minute approved orders)

FRIDAY, DECEMBER 8, 2006

The following cases are submitted this date:

H030166 In re JULIUS L.; D.F.C.S. v. DEVON L., et al.
H030319 PEOPLE v. REYES, JR.
H029196 PEOPLE v. SAUCEDO
H029840 PEOPLE v. ALDERMAN
H030079 PEOPLE v. ALVARADO
H030346 PEOPLE v. MURILLO
H030049 PEOPLE v. MURRAY
H030152 PEOPLE v. AISPURO
H030730 JAMES D., et al. v. SUPERIOR COURT
H030401 PEOPLE v. O'BRIEN
H030318 PEOPLE v. ALEX N.

H030153 PEOPLE v. ROMEO

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: McAdams, J., Duffy,
J.)

Filed December 8, 2006

H030118 PEOPLE v. SPOTSWOOD

That portion of the judgment (order granting probation)
directing defendant to pay a probation supervision fee as a
condition of probation is stricken. The case is remanded to the
trial court with direction to institute proceedings in accordance
with Penal Code section 1203.1b to determine defendant's ability
to pay all or part of the costs of her probation. If the trial
court determines that defendant has the ability to pay, the
probation supervision fee shall not exceed \$64 per month. As
modified, we will affirm the judgment. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams,
J.)

Filed December 8, 2006